

# EXHIBIT 9

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
Civil Action No. 04-11522-WGY

STEVEN R. KINCAID,

PLAINTIFF,

vs.

BANK OF AMERICA CORPORATION,

DEFENDANT.

DEPOSITION  
OF  
ELIZABETH ANNE JANAK

At Charlotte, North Carolina

August 24, 2005

REPORTED BY: KAREN KIDWELL, RMR, CRR  
Notary Public

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## A P P E A R I N G

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704-373-8999

In Attendance: Steven Kincaid

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Exam by Mr. Fine

\*\*\*\*\*  
This is the Deposition of ELIZABETH ANNE JANAK taken in accordance with the Federal Rules of Civil Procedure in connection with the above case. Pursuant to Notice and/or consent, this Deposition is being taken in the offices of MCGUIRE WOOD, L.L.P., 100 North Tryon Street, Suite 2900, Charlotte, North Carolina, beginning at 9:34 a.m. on the 24th day of August, 2005, before KAREN K. KIDWELL, RMR, CRR, Registered Professional Reporter and Notary Public. The deponent does not waive reading and signing of this deposition.

\* \* \* \* \*

ELIZABETH ANNE JANAK  
being first duly sworn, testified as follows:

## EXAMINATION

BY MR. FINE  
Q. Please state your full name and spell your last name.  
A. Sure. Elizabeth Anne Janak. J-A-N-A-K.  
Q. Where do you reside?  
A. My permanent residence is in Davidson, North Carolina. Currently I'm on a temporary assignment in London.

MR. KANE: Mr. Fine, I have a question for you.

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Exam by Mr. Fine

1 of the CFO.  
2 And then was offered a role as a personnel  
3 partner, personnel exec in the marketing organization  
4 and took that. It was during the summer of '03, but I  
5 don't remember exact dates. So I was in a personnel  
6 capacity until November of '04.

7 And I was offered a role in corporate  
8 communication which is part of the marketing  
9 organization. And so I joined the marketing  
10 organization in November of '04, and I've been in  
11 marketing since then.

12 MR. KANE: That's probably more than you  
13 needed to know or wanted to know, Mr. Fine.

14 MR. FINE: No, actually, everything that the  
15 witness said was things that I was going to ask, so --

16 MR. KANE: Okay.

17 THE WITNESS: I'm older than I look. Done a  
18 lot of stuff.

19 BY MR. FINE

20 Q. So you joined Bank of America in October of  
21 2001, right?

22 A. Uh-huh.

23 Q. Okay. And you say that you worked in  
24 executive development and you worked on leadership  
25 development?

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Exam by Mr. Fine

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1 A. Executive development is actually a team  
2 within the leadership development. It's executive  
3 development. I ran executive development programs. So  
4 they were, we have, we develop and deliver programs that  
5 are focused on developing our executive levels. And,  
6 you know, executive levels basically are band 1 through  
7 3 in the organization. So it encompasses, you know,  
8 maybe the top 4 or 5,000 people in Bank of America. And  
9 they're programs like, you know, like seminars, you  
10 know, like that focus really on developing leadership  
11 capability, that kind of stuff.

12 Q. Okay. And you did that from October 2001  
13 until when?

14 A. Until probably nine months from October, so  
15 what would that be? It would take me into about June or  
16 July of --

17 Q. 2002?

18 A. Yeah.

19 Q. Okay. And then what did you start doing  
20 then?

21 A. Well, what, the way my job changed from '01  
22 to '03 was the way, the best way to think about it was,  
23 if you divide the job into two aspects, 50 percent, you  
24 know, 50 and 50. So my, you know, 50 percent would  
25 leave. Another new 50 percent would come on. So I

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Exam by Mr. Fine

1 always had kind of a 50 percent core that I would  
2 maintain every 6 months, but it would, it was constantly  
3 changing. So it's not really accurate to say at this  
4 date, I stopped this and started a whole new role. It  
5 was kind of changing, it was morphing so to speak.

6 Q. And the, if I understand you correctly, in  
7 the beginning, it was 100 percent executive development?

8 A. Right.

9 Q. And then you started taking on?

10 A. Leadership development, client management  
11 responsibilities. So in March of '02, for example, I  
12 kept, I still kept executive development in the work I  
13 had been doing for the first 6 months of my job, but I  
14 picked up another 50 percent. So it became kind of like  
15 150 percent, so to speak. But I picked up client  
16 management responsibility for Cathy Bessant in the  
17 marketing organization.

18 Q. Okay. Explain what that, what that was.

19 A. Primarily, the leadership development partner  
20 is responsible for managing the processes of leadership  
21 development including talent planning, including  
22 executive coaching. You get involved in a lot of  
23 things, but those are your two, those are the two big  
24 processes that you own. And you're a support partner,  
25 if you will, to both the line of business leader, in

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Exam by Mr. Fine

1 this case was Cathy Bessant, and to the personnel  
2 executive, who is the, you know, think of them as the  
3 quarterback, so to speak. And the personnel partner,  
4 they're the generalist.

5 And then they have three primary support  
6 behind them. They have a compensation partner. They  
7 have the leadership development partner, and they have a  
8 staffing partner. And so the personnel exec faces off  
9 to the line of business execs, and leadership  
10 development partner supports both personnel exec but  
11 then also works directly with the line of business exec  
12 and their team.

13 Q. Okay. So please identify who held those  
14 various slots. Cathy Bessant was the head of the  
15 marketing function?

16 A. Yeah. She was chief marketing officer for  
17 the Bank.

18 Q. Okay.

19 A. And Cathy took that role, I was her, I was --  
20 she took that role in like January of '02, and then I,  
21 and she didn't have a leadership development partner  
22 until March. And I was just, I became her leadership  
23 development partner.

24 Q. Okay. And then you referred, you said that  
25 one of the people that Cathy Bessant worked with was a

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Exam by Mr. Fine

- 1 personnel executive, did you say?
- 2 A. Yeah.
- 3 Q. And who was that?
- 4 A. Well, in 2002, it was Mike Clement for I
- 5 don't know how many months. And then, and I don't know
- 6 any of the dates on this, but then it became, the
- 7 personnel partner changed, and Tony Marino took on the
- 8 personnel executive responsibilities for marketing. And
- 9 then at some point in '03, '03 or 04, I don't even
- 10 remember the dates, Mike Carroll took on the
- 11 responsibilities.
- 12 Q. Okay. So there was the personnel executive,
- 13 the chief marketing executive, the leadership
- 14 development partner, who was you, and then I believe you
- 15 mentioned a fourth person or fourth position?
- 16 A. Well, the compensation partner.
- 17 Q. Okay. And who was that?
- 18 A. Boy, people's jobs change so quickly. So
- 19 Christine Lamano was a compensation partner for Cathy at
- 20 one point. It was a fraction of her job.
- 21 Q. A fraction of?
- 22 A. Of Christine's job. She had other comp
- 23 responsibilities. Another compensation partner at some
- 24 point was Kevin Raines, and he also had other
- 25 responsibilities.

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Exam by Mr. Fine

- 1 it in marketing down to band 5. The Bank is organized,
- 2 you know, the comp structure is by band. So bands 1
- 3 through bands 9.
- 4 And so you apply talent planning, Cathy
- 5 wanted to apply it down to band 5 in the organization.
- 6 It's up to the discretion of the executive how deep they
- 7 want to go. The requirement is that it be applied to
- 8 all bands 1 through 3 associates. And then the exec has
- 9 a prerogative to go deeper if they so wish, and Cathy
- 10 wanted to.
- 11 Q. Okay. Cathy Bessant herself was band what?
- 12 What band was she?
- 13 A. Cathy is a band 1.
- 14 Q. Okay.
- 15 A. And she was a direct report to Ken Lewis, the
- 16 CEO.
- 17 Q. And what band were you?
- 18 A. Band 3.
- 19 Q. Okay. Now, in the summer of 2003, you took
- 20 on some additional responsibilities?
- 21 A. Uh-huh.
- 22 Q. And what were the additional responsibilities
- 23 you took on at that point?
- 24 A. Actually, at that point, I took on personnel
- 25 responsibilities so, personnel generalist

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Exam by Mr. Fine

- 1 Q. Okay. You were Cathy Bessant's leadership
- 2 development partner from, did you say March 2002?
- 3 A. Uh-huh.
- 4 Q. Until when?
- 5 A. Summer of '03. So I think it was June or
- 6 July or something like that. I know it was the summer
- 7 Q. Okay. And --
- 8 A. August. I don't know.
- 9 Q. I'm sorry?
- 10 A. Or August. I don't know.
- 11 Q. Okay. The, and what was your role as
- 12 leadership development partner?
- 13 A. I managed the leadership development
- 14 processes, talent planning process, executive coaching
- 15 process.
- 16 Q. For the, for the executives in the marketing
- 17 area?
- 18 A. Yes.
- 19 Q. Okay.
- 20 A. For the marketing organization. Talent
- 21 planning is, think of it as, it's an assessment and
- 22 succession planning tool. At the Bank, we call it
- 23 talent planning. That's just the name of the process.
- 24 But it's succession planning.
- 25 And with, we apply that process, we applied

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Exam by Mr. Fine

- 1 responsibilities.
- 2 Q. You say personnel generally?
- 3 A. Generalist, meaning, you've probably heard it
- 4 referred to as personnel manager or personnel executive.
- 5 The distinction between personnel manager and personnel
- 6 executive is primarily what band level you are. Anybody
- 7 band 3 or above is referred to as an executive. Anybody
- 8 band 4 is referred to as a personnel manager. So I took
- 9 on personnel responsibilities, so I would be referred to
- 10 as a personnel exec.
- 11 Q. Okay. And was the personnel responsibility
- 12 that you had to a particular portion of the Bank? Was
- 13 it a particular area that you had personnel
- 14 responsibility for?
- 15 A. Yeah, it was within the marketing
- 16 organization.
- 17 Q. Okay. And what were your duties and
- 18 responsibilities as the personnel executive within the
- 19 marketing organization?
- 20 A. I characterize it in two main areas. The
- 21 first is the personnel partner is responsible for
- 22 managing personnel processes, so you're responsible for
- 23 managing processes like performance management. You're
- 24 the primary manager of selection processes.
- 25 And by that, in that management capacity, you

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Exam by Mr. Fine

1 give guidance. You work, in a perfect world, you work  
2 in partnership with the manager, with the executives and  
3 how, and how they need to utilize you in the  
4 organization.

5 So, you know, in Bank terms, people say  
6 they're business partners. So you partner with the  
7 executive you would say on what, you know, what's the  
8 business strategy? What are you trying to do with the  
9 business? And then what does it mean as it applies to  
10 talent that you need? Or you know, the, how do you  
11 operationalize that strategy from human terms if you  
12 will.

13 Q. Okay. And you did that until when, from the  
14 summer of 2003 until when?

15 A. November of '04.

16 Q. And then in November of '04, you went into  
17 communications?

18 A. Uh-huh. I was asked to take a role in  
19 communications as the communications partner support for  
20 our CEO. So I thought it would be a nice change.

21 Q. And the CEO --

22 A. Of Bank of America.

23 Q. Yes, in November 2004 was who?

24 A. Ken Lewis.

25 Q. And is he still the CEO?

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Exam by Mr. Fine

1 A. Yes.

2 Q. Okay. Now, when you became the communication  
3 partner for Mr. Lewis, did you cease these other things  
4 that you were doing?

5 A. Yeah.

6 Q. Okay. And the temporary assignment in London  
7 that you're on now is as part of your function as a  
8 communication partner to him or is that something else  
9 again?

10 A. Didn't seem that complicated before. So  
11 based on the work that I had done in my communications  
12 job, I was asked to take on this project of developing  
13 the marketing strategy because that was fundamentally  
14 the work that I did in supporting Mr. Lewis. I put  
15 together a communications strategy for the, for the  
16 Bank. And so my responsibilities are being, they're  
17 being supported temporarily by two folks who reported in  
18 to me.

19 So, yeah, yes and -- yes. But I'm --  
20 recently the organization split, and communications is  
21 now under a different executive than Cathy Bessant. So  
22 I'm working for Cathy Bessant, but I'll go back to my  
23 old job when I'm finished with this project. Am I  
24 overcomplicating?

25 Q. No, no, no. In -- when you were the

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Exam by Mr. Fine

1 personnel executive within the marketing organization,  
2 did you work with people in the personnel department?  
3 Was that part of your job?

4 A. I reported into personnel so I reported into  
5 Tony Marino as a personnel executive when he was  
6 personnel executive. I reported in to Mike Carroll as  
7 his personnel executive. So they were my boss, my, you  
8 know, direct reporting relationship boss, and I  
9 supported the executives within marketing.

10 Q. Okay.

11 A. It's just how it's aligned in the Bank.

12 Q. Okay. At any point in your various jobs with  
13 the Bank, have you had any responsibility with regard to  
14 the Bank's policies and practices with regard to  
15 discrimination?

16 A. Well, as, as a personnel person, you, you  
17 work within the guidelines set forth by the Bank. And  
18 you provide advice and counsel and guidance to the line  
19 of business managers.

20 Q. Okay. Was any part of your job formulating  
21 policy or practice with regard to the implementation of  
22 the Bank's antidiscrimination policy?

23 A. What do you mean formulating policy?

24 Policies are set at a corporate level.

25 Q. Okay.

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Exam by Mr. Fine

1 A. So I don't understand, I don't understand the  
2 question maybe.

3 Q. Okay. Well, let me try getting at this a  
4 different way. The, I think one of your functions was  
5 to help in training for executives at the Bank?

6 A. When I was in executive development, uh-huh,  
7 Yes.

8 Q. Okay. Did you ever, were you ever involved  
9 in training with regard to executives' sensitivity to  
10 discrimination issues?

11 MR. KANE: Objection. Go ahead.

12 THE WITNESS: I wasn't responsible for  
13 developing diversity training if that's the question,  
14 no.

15 BY MR. FINE

16 Q. Okay. You use the term "diversity training."  
17 What does that term mean to you?

18 A. Diversity is basically the appreciation of  
19 diverse backgrounds, genders, EEO, ethnicity, et cetera.

20 Q. And is diversity training something that all  
21 Bank executives go through at some point?

22 A. I don't know.

23 Q. Okay. In your work with the Bank, did, were  
24 you ever asked to help out in terms of the Bank's  
25 dealing with a discrimination problem?

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Exam by Mr. Fine

1 BY MR. FINE

2 Q. Well, don't you agree --

3 MR. KANE: Objection.

4 BY MR. FINE

5 Q. -- that the Bank should do that?

6 A. I'm just not sure that I do. I don't know.

7 Q. Okay. Before you take a break, can you tell  
8 me why you think the Bank shouldn't do that?

9 MR. KANE: Objection.

10 THE WITNESS: Well, I go, the reason why is,  
11 and going back to where we started was I'd look, I'd  
12 first look at the data to see whether it, you know,  
13 whether it warrants that kind of process. And, you  
14 know, does the data suggest that there are enough  
15 occurrences of claims of discrimination that it's  
16 something that we should be dedicating the resources to  
17 keep track of and report on. And that's, that's it.  
18 That's why I don't know if we should be doing that.

19 MR. FINE: Okay. Take your break.

20 (A recess transpired from 10:52 a.m. until  
21 11:04 a.m.)

22 BY MR. FINE

23 Q. Ms. Janak, I believe that before the break,  
24 one of the things that you said was that the problem of  
25 the executive who might be prone to discriminate is a

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Exam by Mr. Fine

1 problem that could be handled in the selection process?

2 A. I suggest, I meant that I would suggest  
3 addressing it in selection, and I think that would come  
4 out through the reference process.

5 Q. Okay. And does that mean that one of the  
6 things that the Bank would consider relevant or should  
7 consider relevant is whether an executive had been the  
8 target of claims of discrimination at his previous place  
9 of employment?

10 A. I don't know that, in the reference process  
11 that's a specific question, but it, you know, we probe  
12 people on prior performance and prior management if  
13 they're coming in to be a manager.

14 Q. Okay. But should the Bank consider it to be  
15 relevant information if a prospective executive to be  
16 employed by the Bank had been the subject of multiple  
17 claims of discrimination at previous places of  
18 employment?

19 MR. KANE: Objection.

20 THE WITNESS: Would the Bank consider it  
21 relevant?

22 BY MR. FINE

23 Q. Yes.

24 A. Yeah.

25 Q. And in your view, the Bank should consider it

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Exam by Mr. Fine

1 relevant, right?

2 MR. KANE: Objection.

3 THE WITNESS: In my, yeah, in my view.

4 MR. FINE: I'd like to have marked as an  
5 exhibit document bearing Bates number BA 116.

6 (Plf. Exhibit No. 1, Copy of 8/18/03 Emails  
7 between Kotopoulos and Janak, was marked for  
8 identification.)

9 MR. KANE: Do you have a copy -- well,  
10 generally, it's professional courtesy to have a copy for  
11 the lawyer to look at, too, whether he's seen it before  
12 or not.

13 MR. FINE: That is certainly true, and if you  
14 would make your Xerox machine available, I have a bunch  
15 of documents that I could have made copies of.

16 MR. KANE: Well, do you want to do that?

17 MR. FINE: Sure.

18 MR. KANE: Okay.

19 (A recess transpired from 11:07 a.m. until  
20 11:11 a.m.)

21 BY MR. FINE

22 Q. Ms. Janak, I ask you to read the document  
23 that was just marked as an exhibit to yourself. And  
24 then I have some questions about it.

25 Have you read it?

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Exam by Mr. Fine

1 A. Uh-huh.

2 Q. Okay. Now, first of all, this is a print-out  
3 of two emails, right?

4 A. Uh-huh.

5 MR. KANE: You need to answer audibly.

6 THE WITNESS: I'm sorry. Yes. Yes, it is.

7 BY MR. FINE

8 Q. Okay. And the first email in time is the one  
9 that appears at the bottom of the page?

10 A. Yes.

11 Q. Okay. And that's an email that you sent to  
12 Alec Kotopoulos, correct?

13 A. Correct.

14 Q. All right. Now, above the words "original  
15 message," there is "From Janak, Elizabeth." And above  
16 it, it says, "original message," and then above that,  
17 there's a "P.S.?"

18 A. Yes.

19 Q. Was that P.S. part of your email or  
20 Mr. Kotopoulos' responding email or something else?

21 A. It was part of Alec's responding email,  
22 although unrelated to the content of my initial email.

23 Q. Okay. Now, as of the time you sent this  
24 email to Alec Kotopoulos, had your duties and  
25 responsibilities changed? You said there was a change

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Exam by Mr. Fine

- 1 In the summer of 2003?
- 2 A. Uh-huh.
- 3 Q. And was this email sent before the change or
- 4 after the change?
- 5 A. After the change when I had the personnel
- 6 responsibilities.
- 7 Q. Okay. Prior to sending this email, did you
- 8 know Alec Kotopoulos?
- 9 A. Yes.
- 10 Q. How did you know him?
- 11 A. He was a manager in the marketing
- 12 organization and reported into Vipin Mayar. I know
- 13 because I was leadership development partner, and I
- 14 worked with Vipin and his team in talent planning
- 15 process.
- 16 Q. All right. Now, in the course of working
- 17 with Vipin on the talent planning process, what kind of
- 18 interactions did you have with Mr. Kotopoulos, if any?
- 19 A. I facilitated, the, you know, I would
- 20 facilitate the team meeting. The, what did we call it?
- 21 Talent planning. We call it a calibration meeting.
- 22 Q. The talent planning meeting?
- 23 A. Uh-huh.
- 24 Q. And was the talent planning meeting the
- 25 meeting at which associates were rated for purposes of

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Exam by Mr. Fine

- 1 the bonus program?
- 2 A. Technically, no. The associates were
- 3 rated -- as part of talent planning, associate
- 4 performance is discussed, and additional feedback is
- 5 solicited across the team. So that's really what we do
- 6 in talent planning meeting.
- 7 Q. Okay. Were you ever at a talent planning
- 8 meeting in which Steven Kincaid was discussed?
- 9 A. I don't remember any discussion about Steven
- 10 Kincaid in talent planning.
- 11 Q. Okay. Were you ever in a situation where you
- 12 gave any kind of assessment of Alec Kotopoulos to Vipin
- 13 Mayar?
- 14 MR. KANE: Objection.
- 15 THE WITNESS: No, I did not give Vipin an
- 16 assessment of Alec.
- 17 BY MR. FINE
- 18 Q. Okay. Did you ever do that with any
- 19 executives? Did you ever give, was that part of your
- 20 role to help the executives that you work with evaluate
- 21 other executives?
- 22 A. I would give Cathy Bessant input into her
- 23 direct reports as part of talent planning and the
- 24 feedback process. I'd facilitate those discussions. I
- 25 would probe or have people describe their feedback. But

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Exam by Mr. Fine

- 1 It wasn't my role to give Vipin an assessment of each of
- 2 his direct reports, no.
- 3 Q. Okay. Did you, would you give, did you give
- 4 Cathy Bessant your views of Vipin?
- 5 A. Yes.
- 6 Q. Okay. In -- were you ever at a talent
- 7 planning meeting when Alec was discussed?
- 8 A. Yes.
- 9 Q. Okay. Did you yourself ever say anything
- 10 about Alec?
- 11 MR. KANE: Objection.
- 12 THE WITNESS: I don't really remember, if I
- 13 had any input.
- 14 BY MR. FINE
- 15 Q. Okay. Do you remember what any other people
- 16 said about Alec's strengths as manager?
- 17 MR. KANE: Objection.
- 18 THE WITNESS: I don't remember the details of
- 19 the feedback. I remember that Alec was rated very
- 20 highly. Performances and potential was rated highly.
- 21 BY MR. FINE
- 22 Q. The, do you remember anyone saying anything
- 23 about any weaknesses that Alec may have had?
- 24 MR. KANE: Objection.
- 25 THE WITNESS: I don't remember any specifics.

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Exam by Mr. Fine

- 1 BY MR. FINE
- 2 Q. Do you remember anything general about
- 3 whether Alec was perceived to have any weaknesses?
- 4 MR. KANE: Objection.
- 5 THE WITNESS: I couldn't, I don't, I couldn't
- 6 comment on what his strengths or weaknesses would be or
- 7 how they were evaluated. Every associate, though, we
- 8 discuss what we call the T-chart, you know, the
- 9 strengths on one side, developmental needs on the other
- 10 side. So, but I don't remember any specifics or in
- 11 general what the development needs were for Alec.
- 12 BY MR. FINE
- 13 Q. I'm going to read you something and ask you
- 14 whether this is at all similar to anything that you may
- 15 have heard about Alec. Okay? His style was rough, was
- 16 not people centric. He was more work centric than
- 17 people centric?
- 18 MR. KANE: Let me look at the document you're
- 19 reading from.
- 20 MR. FINE: You don't have a right to that.
- 21 MR. KANE: Yes, she does. You don't have the
- 22 right to read something and represent -- when you have
- 23 the document there, she's entitled to look at it.
- 24 MR. FINE: No.
- 25

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DEPOSITION OF ELIZABETH JANAK  
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Exam by Mr. Fine

1 BY MR. FINE  
2 Q. Did you ever hear something like that --  
3 MR. KANE: Objection.  
4 BY MR. FINE  
5 Q. -- about Alec?  
6 A. That he was not people centric?  
7 Q. That his style was rough?  
8 MR. KANE: Objection.  
9 THE WITNESS: I don't know that I ever, I  
10 don't know if I've ever heard that. I don't remember.  
11 BY MR. FINE  
12 Q. Did you ever hear something along the lines  
13 that he was not people centric?  
14 MR. KANE: Objection.  
15 THE WITNESS: I don't remember that phrase.  
16 BY MR. FINE  
17 Q. Do you remember anybody saying something in  
18 substance like that about him?  
19 MR. KANE: Objection.  
20 THE WITNESS: I'm sorry. I just don't  
21 recall.  
22 BY MR. FINE  
23 Q. From your perception of Alec, does what I  
24 just read sound to you to be inept?  
25 MR. KANE: Objection.

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Exam by Mr. Fine

1 THE WITNESS: Inept? Alec was very goal  
2 driven. And he operated with a lot of speed.  
3 BY MR. FINE  
4 Q. A lot of?  
5 A. Speed. Urgen -- sense of urgency. I could  
6 see how his sense of urgency could be interpreted as  
7 aggressive, I think was the word you used.  
8 Q. All right. Now, in this August 18th, 2003  
9 email that you sent to Alec, you referred to "our  
10 meeting on Tuesday." Do you see that?  
11 A. Yes.  
12 Q. What meeting were you referring to?  
13 A. Alec and I were going to the meeting. We had  
14 scheduled a meeting. I believe it was the following  
15 day.  
16 Q. Okay. And who was going to be present at  
17 this meeting?  
18 A. Just he and I.  
19 Q. What was the purpose of the meeting?  
20 A. Well, Alec and I had, I had scheduled some  
21 ongoing touch bases with all of Vipin's team members  
22 because I was coming into a new job, so I was coming up  
23 to speed. So it was a scheduled touch base. And I also  
24 wanted to discuss this topic with him.  
25 Q. Okay. So you say here, "I'd like to discuss

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Exam by Mr. Fine

1 the following: Associates who are on performance  
2 improvement, who, why, actions, time frame." Do you see  
3 that?  
4 A. Yes.  
5 Q. Was that something that you were discussing  
6 with each of Vipin's direct reports?  
7 A. I don't remember that.  
8 Q. Do you remember whether there was something  
9 specific as to why you wanted to discuss that subject  
10 with Alec or was this just a general kind of inquiry?  
11 A. To be honest, I'd be speculating as to, you  
12 know, specifically, but I had pulled the data that I  
13 know you've seen, and so that's, I wanted to discuss  
14 that information with him.  
15 MR. FINE: Okay. Could you please read back  
16 the answer?  
17 (The Court Reporter read the answer  
18 commencing on page 59 line 11.)  
19 MR. FINE: Okay. I'd like to have marked as  
20 the next exhibit BA 117.  
21 (Plf. Exhibit No. 2, Copy of CAMR Turnover As  
22 of 8.11.03, BofA-0117, was marked for  
23 identification.)  
24 BY MR. FINE  
25 Q. Do you recognize this document?

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Exam by Mr. Fine

1 A. Yes.  
2 Q. What is it?  
3 A. It's the CAMR turnover data, 12-month  
4 turnover as of August 11th of '03.  
5 Q. And is this a document that you had  
6 requested?  
7 A. Uh-huh. Yes. I'm sorry. Yes.  
8 Q. And how did you go about getting this  
9 document?  
10 A. I asked our personnel analyst to pull the  
11 data for me.  
12 Q. Okay. And who was the personnel analyst?  
13 A. Ryan Frosch, F-R-O-S-C-H.  
14 Q. And what department did Ryan Frosch work in?  
15 A. Personnel.  
16 Q. And was he assigned to the marketing area in  
17 particular?  
18 A. Yes. He reported in to me.  
19 Q. Okay. And what request did you make that you  
20 got this in response to?  
21 A. I asked him to pull the turnover data for the  
22 AMN hierarchy for the past 12 months.  
23 Q. All right. What does AMN stand for?  
24 A. I believe that was, well, I believe that was  
25 Alec's organization. Each manager has a letter that

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Exam by Mr. Fine

1 they're assigned. And so as you go, you know, depending  
2 on where you are in the organization. So Alec was AMN.  
3 Cathy was known as A. Vipin Mayer was M. Alec was AMN.  
4 And then the, the letters following the N are different  
5 managers under Alec, his direct reports.

6 Q. Okay. So --

7 A. Or associates. I'm not really sure, but --

8 Q. Okay. So the left hand column is headed  
9 Hierarchy?

10 A. Uh-huh.

11 Q. What does that mean?

12 A. Reporting relationship. It's the  
13 identification of the managers in the hierarchy.

14 Q. Okay. And all right. So the first entry  
15 under that is AMNG?

16 A. Uh-huh.

17 Q. Okay. AMN refers to Alec. What does AMNG  
18 refer to?

19 A. Probably a manager under Alec. I'm not  
20 really sure at this point.

21 Q. Okay. All right. Now, there's some  
22 handwriting. Whose handwriting is that?

23 A. Mine.

24 Q. Okay. Now, did you ask for CAMR turnover,  
25 turnover on any other occasion?

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Exam by Mr. Fine

1 A. Probably. I don't remember. You know, as I  
2 was coming into a new job, that's just some of the  
3 information I was looking at.

4 Q. Okay. Now, CAMR had approximately how many  
5 people in it as of August 2003?

6 A. I don't, I don't remember. It was over a  
7 hundred.

8 Q. And what this reports is these are the  
9 terminations within the previous 12 months?

10 A. Uh-huh.

11 Q. When you looked at this, did this strike you  
12 as being a high level of turnover, a low level of  
13 turnover or an average level of turnover?

14 A. I don't remember specifically, but turnover  
15 generally ran about ten percent.

16 Q. Okay.

17 A. Ten or fifteen at the time.

18 Q. Okay. All right. Now, going back to the  
19 email, was this the data that you were referring to that  
20 prompted you to write the email the way that you did or  
21 was there different or other data?

22 A. This was the data that I referenced in this  
23 email.

24 Q. Okay. Did you send this to Alec along with  
25 your email?

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Exam by Mr. Fine

1 A. I don't know if I did that.

2 Q. Okay. Then going back to your email, I'm  
3 going to read this for the record, and then I have some  
4 questions for you. "Terminations over the past 12  
5 months. B4-B5 voluntary and involuntary terminations  
6 over the past 12 months suggest potential age bias --  
7 8/10 (80%) were 40 years or older." Have I read that  
8 correctly?

9 A. Uh-huh. Yes.

10 Q. Okay. Now, when you got this print-out from  
11 Ryan Frosch, did -- the first time that you got the  
12 print-out, did it give the dates of birth of each of  
13 these people?

14 A. I requested that, I believe.

15 Q. Okay. And why did you request the dates of  
16 birth?

17 A. Well, I was interested in looking at -- I  
18 requested gender. I requested ethnicity. I requested  
19 all the demographic information that made sense, you  
20 know, that I should request because I was looking at  
21 turnover.

22 Q. And is the reason why you requested this  
23 because you wanted to make sure there was an appropriate  
24 sensitivity to patterns?

25 A. Well, I wanted to, I wanted to understand the

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1 data myself. And so I was looking at all three of these  
2 areas and bands. But -- in addition.

3 Q. Okay. All right. In your email, you refer  
4 to B4-B5?

5 A. Uh-huh.

6 Q. What does that mean?

7 A. Those are band levels, bands 4 and 5.

8 Q. Okay.

9 A. They're referred to as H in the data  
10 document.

11 Q. Okay. Going back to the CAMR Turnover  
12 document, there is a column that's headed Term Code.

13 A. Yes.

14 Q. What do those letters signify in this column?

15 A. Term code and term reason are kind of the  
16 same thing. The term reason, if you will, gets  
17 categorized into a code so CCH means career change, for  
18 example.

19 Q. Okay. All right. And if you go, look to the  
20 column that says "term reason," there is a 0 or a 1 in  
21 front of the wording. What does the 0 or 1 signify?

22 A. Zero signifies a voluntary turnover. One  
23 signifies involuntary.

24 Q. Okay. All right. Now, is it fair to say  
25 that when you got this from Ryan Frosch, there were

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Exam by Mr. Fine

- 1 certain aspects of this that caused you some concern?
- 2 MR. KANE: Objection.
- 3 THE WITNESS: I wouldn't say concern. It was
- 4 a topic that I wanted to discuss with Alec. I wanted to
- 5 understand further.
- 6 BY MR. FINE
- 7 Q. Okay. And what about it did you want to
- 8 understand further?
- 9 A. I wanted to understand, I wanted more
- 10 information on reasons for termination, and I wanted, I
- 11 also wanted to ensure that, you know, that Alec was
- 12 sensitive to either intended or unintended consequences
- 13 or actions. So I wanted him to understand, I wanted him
- 14 to see this data from a broader perspective rather than
- 15 just individual perspectives on each associate.
- 16 Q. Okay. And is it fair to say that what you
- 17 perceived was that the pattern here suggested potential
- 18 age bias?
- 19 A. Well, as per my note to Alec, some of the way
- 20 I was interpreting the data, I, yeah, I suggested that
- 21 there could be, you know, optically, it looked like
- 22 there could be something there. And I wanted him to
- 23 understand that, what the data looked like from a
- 24 broader perspective. I also wanted him to understand
- 25 that, as personnel partner, that, like he was on my

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- 1 watch, so to speak, and that I wanted to, I wanted him
- 2 to know how we needed to work together.
- 3 Q. Okay. All right, now, you send this email to
- 4 him on August 18th, 2003 at 3:27 p.m., correct?
- 5 A. Yes.
- 6 Q. When you sent the email to him, did you
- 7 anticipate that he was going to be sending you a
- 8 responding email or did you rather anticipate that this
- 9 was simply something you were going to be discussing the
- 10 next day or some combination?
- 11 A. I don't really remember what I anticipated.
- 12 It didn't surprise me to get a response.
- 13 Q. Did it surprise you at how fast the response
- 14 came back?
- 15 A. No, actually it didn't. Alec was pretty
- 16 diligent.
- 17 Q. All right. You send this at 3:27 p.m. He
- 18 responds at 3:54 p.m. That's what, 27 minutes later?
- 19 A. Okay.
- 20 Q. Did that strike you that he was perhaps being
- 21 a little bit defensive?
- 22 MR. KANE: Objection.
- 23 THE WITNESS: Actually, no, it didn't. If
- 24 you catch somebody at their desk when they're reading
- 25 their email, you usually get quick responses. And so I

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- 1 interpreted it more as great, Alec's at his desk and
- 2 reading his email. I'm not trying to be flippant, but
- 3 that was how I interpreted it.
- 4 MR. FINE: Could you read back the answer,
- 5 please?
- 6 (The Court Reporter read the answer
- 7 commencing on page 66 line 23.)
- 8 BY MR. FINE
- 9 Q. Okay. What did you, what was your reaction
- 10 when you read Alec's response to your email?
- 11 A. It made a lot of sense to me. I know that,
- 12 and I knew at this time that the CAMR organization was
- 13 going through a change of, really in terms of a change
- 14 in model and what they were driving towards. And the,
- 15 you know, like just the performance goals that they had.
- 16 And so Alec's response made complete sense to me as he
- 17 talked about, I understood that they were going from a
- 18 model of what they had and what Alec walked into in that
- 19 role was good researchers but not necessarily, he had a
- 20 lot of talent that couldn't really translate the
- 21 research to business recommendations.
- 22 And so I knew that they were going through a
- 23 change in model and a change in talent based on that,
- 24 you know, that, what they were driving towards. So this
- 25 made perfect sense.

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- 1 Q. Okay. When you said this made perfect sense,
- 2 are you referring to what Alec wrote in his email or are
- 3 you referring to something that Alec said to you orally
- 4 perhaps in the meeting the next day?
- 5 A. Probably a little bit of both. But when I
- 6 first read the email, I thought, okay, this made sense.
- 7 And we'll discuss it more the following day.
- 8 Q. Okay. Well, you say that, in your email that
- 9 the terminations of the past 12 months suggest potential
- 10 age bias, 8 to 10, 80 percent were 40 years or older.
- 11 Is there anything in just the email that caused you to
- 12 have less concern on that score?
- 13 A. Yes. In the email, Alec referred more, his
- 14 priority of focus seemed to be, he was kind of guessing
- 15 at the ages. And so, for example, he went through, you
- 16 know, I have, people left for, you know, there are three
- 17 different reasons. And then he kind of guessed at the
- 18 ages.
- 19 And as he went through, for example, the
- 20 resignations, he said, well, these two were on
- 21 performance warning. I don't know what their ages were
- 22 so immediately, it suggests to me that what he was more
- 23 focused on was, you know, the task, if you will, and he
- 24 wasn't really focused on how old are these people or
- 25 what gender are these people or anything else.

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Exam by Mr. Fine

- 1 Q. And you felt that you could draw that  
2 conclusion based just on the email that he sent you?  
3 A. Well, you asked me for my interpretation of  
4 the email. He and I had a follow-up conversation the  
5 next day. So my conclusions overall were based on a  
6 combination of the email and the meeting that we had.  
7 Q. Okay. I understand that. And what I want to  
8 try to do is just focus on the email part of it first.  
9 A. Okay.  
10 Q. Okay? And if you can separate those things  
11 out.  
12 A. Okay.  
13 Q. Was there anything in the email alone that  
14 lessened the level of your concern?  
15 A. Yes. We had -- the fact that he had three,  
16 he called them buckets of, he had terminations, job  
17 eliminations, resignations. And then he actually had  
18 another bucket. So his, you know, his, the fact that he  
19 separated like -- he separated voluntary, involuntary,  
20 and then he even detailed job elimination. That -- I  
21 mean, that was my first, my first inclination that he  
22 was, he was managing to task.  
23 Q. And what do you mean by that?  
24 A. He was managing, he was managing to a goal.  
25 He was managing to a goal of changing that organization.

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Exam by Mr. Fine

- 1 And he was taking it from a broader picture.  
2 Q. Well, remember, at this point, I'm just  
3 asking you about the email.  
4 A. Right. Well, I mean, that's what -- when I  
5 looked at, okay, he has three, three buckets plus  
6 another. I think we're, you know, that was just an  
7 inclination. I didn't draw any conclusions. I wouldn't  
8 say I drew any conclusions from this email alone.  
9 Q. Right. Because I mean, if you look at  
10 terminations, there are, he talks about four  
11 terminations. Every one of them is over forty. Right?  
12 A. Uh-huh. Well, he says, "not sure of age.  
13 Probably in his 40s."  
14 Q. Well, but certainly -- I mean, you send him a  
15 letter. You send him an email saying, gee, looks like  
16 there's a pattern of age discrimination or potential age  
17 bias here.  
18 And then he writes back to you and he talks  
19 about the terminations. And there were, there are just  
20 four terminations that he talks about. Every one of the  
21 terminations is somebody that he identifies as being  
22 over forty. Right?  
23 A. Yeah. I -- okay.  
24 Q. So you couldn't have been reassured by that,  
25 right?

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Exam by Mr. Fine

- 1 MR. KANE: Objection.  
2 THE WITNESS: I, what I indicated, though,  
3 that I was reassured by was that he simply identified  
4 that there were different buckets. I --  
5 BY MR. FINE  
6 Q. Okay. I understand that. That's fair.  
7 A. Yeah.  
8 Q. But if you look at just that part of it,  
9 that's not reassuring. In fact, that's worse.  
10 MR. KANE: Objection.  
11 BY MR. FINE  
12 Q. Right? You talked about eight out of ten.  
13 He's talking about four out of four.  
14 A. That part is not necessarily reassuring, but  
15 I wasn't --  
16 Q. In fact, it's the -- I'm sorry.  
17 A. I wasn't really focused on that. What  
18 reassured me was he gave, he was able to give me  
19 information on terminations, job eliminations,  
20 resignations and other. I mean, that was kind of like,  
21 great, we're going to have a good discussion tomorrow.  
22 Q. Okay. All right. And then you met with him  
23 the next day?  
24 A. Correct.  
25 Q. And it was just the two of you?

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Exam by Mr. Fine

- 1 A. Correct.  
2 Q. At the meeting? Okay. How long did the  
3 meeting last?  
4 A. It was probably scheduled for 60 minutes. I  
5 don't remember the details of how long it lasted.  
6 Q. Okay. What did you say in the meeting and  
7 what did he say?  
8 A. I don't remember any specifics. I remember  
9 we had a conversation about, about contents of this  
10 email basically, and he walked me through the  
11 terminations, the reasons for termination. He walked me  
12 through the job eliminations. He walked me through, he  
13 walked me through each of these buckets. And  
14 understanding the change that they were driving in that  
15 organization, I was satisfied that they were following  
16 the process, that they were really focused on driving  
17 performance in that organization. And that he was  
18 making decisions based on performance, and that was his  
19 focus.  
20 Q. Okay. And that was true of the job  
21 eliminations and the resignations as well as the  
22 terminations?  
23 A. Yes.  
24 Q. And I believe that you said that one of the  
25 things that he talked to you about was that he was

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Exam by Mr. Fine

- 1 changing the direction of his group from a research  
2 direction to a. how did you put it?  
3 A. I don't remember exactly what I said, but  
4 when Alec came into that job, what he walked into  
5 basically was an organization that had some good  
6 research or good statisticians, but he had a lot of  
7 resources that, a lot of talent that did not have  
8 business acumen required for the role that that  
9 organization needed to play.  
10 Q. And so there were, you know, that was kind of  
11 his, there was a general understanding of that  
12 assessment. And so what he was doing was really, he was  
13 like upgrading, he was trying to upgrade the performance  
14 through driving more business approach, if you will, to  
15 the research and the recommendations that was driven by  
16 the research.  
17 Q. Okay. And did his explanation in that, did  
18 that explanation that he gave you cause you any concern?  
19 A. No. What do you mean by --  
20 Q. Well, essentially, as I understand it, he was  
21 saying that there were certain terminations that he made  
22 because he was changing the direction of the  
23 organization from a research direction to more of a  
24 business direction, right?  
25 A. The goal of that organization had always been

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Exam by Mr. Fine

- 1 to do research for the business.  
2 Q. Right.  
3 A. What Alec was faced with when he came into  
4 that organization was, were researchers who weren't  
5 necessarily adding value to the business. So he wasn't  
6 changing direction per se, but what he was trying to do  
7 was get them aligned in the direction that they should  
8 have already been in.  
9 And so he, it wasn't like he was saying,  
10 okay, we're not going to do this anymore. We're going  
11 to do this. It wasn't like a job change like, he wasn't  
12 changing the jobs of the organization. What he was  
13 doing was saying, what you're doing is necessary but not  
14 sufficient.  
15 It was like the job was undone I guess maybe  
16 is the best way to say it. People would, they would be  
17 great research projects where if, you know, the final  
18 recommendations were not necessarily something that  
19 either they weren't really provided or they weren't  
20 applicable to the business, and they weren't adding the  
21 value that they could have or should have been adding.  
22 Q. Did you do anything to try to assess whether  
23 what Alec was telling you was correct or not?  
24 A. I didn't investigate what, you know, no. I  
25 guess the short answer is no.

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Exam by Mr. Fine

- 1 MR. KANE: Okay.  
2 BY MR. FINE  
3 Q. Do you remember anything that you said or  
4 that Alec said about Steve Kincaid?  
5 A. No.  
6 Q. Did he mention that by the time of this  
7 meeting that he was having with you that Mr. Kincaid had  
8 filed a complaint with the EEOC?  
9 A. I don't recall that.  
10 Q. Do you recall whether you knew that or not?  
11 A. No.  
12 Q. You think that you did not know it?  
13 A. Oh, let's see. I don't remember the timing  
14 of when I found out about that. I think, I just don't  
15 remember the timing.  
16 Q. Okay. You found out at some point? And you  
17 just don't remember whether you had found out about it  
18 by the time of this meeting with Mr. Kotopoulos, right?  
19 A. I'm just blanking on it right now.  
20 Q. Okay. Did you ask Alec whether anybody had  
21 made a claim of discrimination against him?  
22 MR. KANE: During the meeting?  
23 THE WITNESS: I don't remember doing that. I  
24 don't remember.  
25

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Exam by Mr. Fine

- 1 BY MR. FINE  
2 Q. When is the first time that you had  
3 learned -- when is the first time you learned that  
4 somebody had made a claim of discrimination against Alec  
5 Kotopoulos?  
6 A. Is there a claim of discrimination against  
7 Alec Kotopoulos? I guess I'm, maybe I -- maybe I'm  
8 confused with what we're talking about here. Because I  
9 thought the -- well, Sheila Burroughs was the manager in  
10 this case, not Alec. And so --  
11 Q. So it was your understanding that the  
12 decision to terminate Mr. Kincaid hadn't even been made  
13 by Alec?  
14 A. Well, Sheila Burroughs was the manager, yeah.  
15 So -- I'm sorry. Am I going down the wrong path?  
16 Q. I want to be sure that we're precise  
17 here. Okay?  
18 A. Okay.  
19 Q. At the time you were meeting with  
20 Mr. Kotopoulos.  
21 A. Right.  
22 Q. Did you understand that the decision to  
23 terminate Mr. Kincaid had been made by Sheila Burroughs  
24 and not by Alec Kotopoulos?  
25 A. I -- yeah, I understand that Mr. Kincaid had

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Exam by Mr. Fine

1 but no investigation had been done prior to the time  
2 that Mr. Kincaid was terminated. And if the only way  
3 that you know that is from a privileged communication,  
4 you're going to turn to Mr. Kane. But if you know about  
5 it from some other way --

6 MR. KANE: That's how you know about it.  
7 Okay. Assert the privilege.

8 MR. FINE: Okay.

9 BY MR. FINE

10 Q. Did you know anything about Herb Schaffer?

11 A. No.

12 Q. This information that you put in your  
13 August 18th email to Alec Kotopoulos that there was a  
14 pattern that suggested potential age bias, did you  
15 communicate that to anybody else at the Bank?

16 A. I don't recall.

17 Q. Did -- when you were, other than this one  
18 occasion when you saw this pattern, during your time at  
19 the Bank, did you ever see a turnover record that  
20 suggested that, also suggested potential age bias or was  
21 this the only time that it happened?

22 A. I didn't see any other data that suggested  
23 age bias.

24 Q. Okay. The, I want you to turn your attention  
25 to this document, the print-out that you got. Other

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Exam by Mr. Fine

1 than the potential age bias, was there anything else in  
2 this document that caused your attention, that caught  
3 your attention or that caused you any concern?

4 MR. KANE: Objection.

5 THE WITNESS: No.

6 BY MR. FINE

7 Q. Okay. I want to direct your attention to the  
8 entries next to Herman Schaffer, Allan Fitch, and Craig  
9 Giudici. Giudici.

10 I'd like you to look at the data there and  
11 tell me if you see anything with regard to those, the  
12 entries with regard to those three people that catch  
13 your attention.

14 A. Okay.

15 Q. Do you see any such thing?

16 A. All white, all male. All terminated on the  
17 same day. All involuntary terminations.

18 Q. Okay. Does the fact that they were all  
19 terminated on the same day, did that strike you at the  
20 time as being perhaps something that you should discuss  
21 with Mr. Kotopoulos?

22 A. I don't remember if we discussed that.

23 Q. Based on your experience at the Bank, is that  
24 unusual for three people in the same area to be  
25 terminated for unsatisfactory performance on the same

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Exam by Mr. Fine

1 day?

2 A. If this were an organization that wasn't  
3 going through a major performance improvement, then I'd  
4 say yes. But given the circumstances of the  
5 organization and the, you know, the upgrade that Alec  
6 was leading, it doesn't surprise me that much, if -- he  
7 was going through a process of identifying performance  
8 issues with his team. So actually, you'd expect them to  
9 be relatively consistent in timing if -- or close in  
10 timing.

11 Q. Well, don't the guidelines of the Bank  
12 provide a procedure whereby when somebody is put on a  
13 performance warning, they're supposed to be given the  
14 opportunity to improve their performance, et cetera, et  
15 cetera?

16 A. Yes. As part of the guiding principles, what  
17 you call it, associates are given an opportunity, a time  
18 frame with which to improve their performance.

19 Q. Okay. And so does the fact that they're  
20 supposed to be given consideration in that way, is that  
21 a cause for concern when you see that they're all  
22 terminated on the same day?

23 A. Not if they were all warned in the same time  
24 frame, not if they were all put into, you know, part of  
25 that process in the same time frame.

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Exam by Mr. Fine

1 Q. Did you discuss that with Mr. Kotopoulos?

2 A. I don't recall.

3 MR. FINE: Okay. I'd like to have marked as  
4 the next exhibit BA 118 through BA 121.

5 (Plf. Exhibit No. 3, Copy of New Hires-AMN,  
6 BofA-0118 through BofA-0121, was marked for  
7 identification.)

8 MR. FINE: 118 through 121.

9 BY MR. FINE

10 Q. Now, directing your attention first to the  
11 first three pages of this document?

12 A. Okay.

13 Q. Each of these pages is headed New Hires --  
14 AMN, 1/1/2001 to 11/30/03.

15 A. Uh-huh.

16 Q. Is this a document that was generated at your  
17 request?

18 A. I don't remember why it was generated. I  
19 don't remember if I requested it or if it was just part  
20 of, you know, normal -- I don't know the date that it  
21 was generated.

22 Q. Okay. Well, presumably, it was generated  
23 some time after 11-30-2003, right?

24 A. Uh-huh.

25 Q. Did this document -- let me just explain

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Exam by Mr. Fine

- 1 something. When documents are produced by the  
2 Defendant, I don't know where they come from.  
3 A. Okay.  
4 Q. So did this document come from your file?  
5 A. Yes, it did. This document came from, you  
6 know, these are, this is a list of the hires into the  
7 organization over a two-year period.  
8 Q. Okay. And as you sit here today, you don't  
9 remember --  
10 A. The specifics of why I requested it or why it  
11 came to be.  
12 Q. All right. So you don't even know that you  
13 were the one who requested this document; is that right?  
14 A. I, you know, I would presume that I was.  
15 Q. Okay. This was a document that was in your  
16 file?  
17 A. Right.  
18 Q. Following the sending of your August 18th,  
19 2003 email and your August 19th, 2003 meeting with  
20 Alec Kotopoulos, did you do anything further to check on  
21 whether there was a possible potential age bias in  
22 terminations anywhere in the marketing area?  
23 A. No.  
24 Q. Okay. I'd now like to, you to turn to BA 121  
25 which is the last page of this. Was this a document in

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Exam by Mr. Fine

- 1 your file as well?  
2 A. Yes.  
3 Q. Was this a document that you requested be  
4 generated?  
5 A. I presume, yes.  
6 Q. Do you remember why you had it generated?  
7 A. I don't remember the details.  
8 Q. Okay. Do you remember anything about it, why  
9 you had it generated?  
10 A. No, I'm sorry, I don't.  
11 Q. Okay. All right. Going back to the first  
12 exhibit, the, your August 18th email and  
13 Mr. Kotopoulos's response. I want you to look at his  
14 PS.  
15 And he says, "Can you send the final talent  
16 planning grids for band 4 and 5 for CAHR? I need to be  
17 prepared to have discussions with Y associates,  
18 especially given your mention to associates at CB's  
19 meeting on Friday--Vipin mentioned that you have them."  
20 Have I read that correctly?  
21 A. Uh-huh. Yes.  
22 Q. Okay. First of all, there's a reference to Y  
23 associates. Do you see that?  
24 A. Yes.  
25 Q. What was Mr. Kotopoulos referring to there?

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Exam by Mr. Fine

- 1 What does Y associates mean?  
2 A. I think it's a typo. I think it should read  
3 my associates.  
4 Q. Okay. And then there's a reference to your  
5 mention to associates at CB's meeting on Friday. Who is  
6 CB?  
7 A. Cathy Bessant.  
8 Q. And what's the meeting that Mr. Kotopoulos is  
9 referring to?  
10 A. Cathy Bessant at that time had a monthly  
11 two-deep meeting with the marketing organization meaning  
12 two, two levels below Cathy Bessant. And so as part of  
13 that meeting, I probably had given a status of where we  
14 were with the talent planning process.  
15 And so I was giving, I believe, I think, I'm  
16 presuming that I was giving a status on the talent  
17 planning, and so Alec was looking for the final talent  
18 planning grids to make sure that all his records were  
19 updated.  
20 Q. Okay. And this was in preparation for a  
21 talent planning meeting.  
22 A. Well, the process kind of culminates in a  
23 meeting with Cathy, with, between Cathy and Ken Lewis.  
24 But what I think Alec was referring to here was that  
25 associates get feedback as part of their process.

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Exam by Mr. Fine

- 1 There's a circle back to associates to give them the  
2 feedback.  
3 (Lamano Exhibit No. 2 was referred to.)  
4 BY MR. FINE  
5 Q. Okay. I show you what was marked as Lamano  
6 Exhibit 2. Do you recognize that document?  
7 A. Yes.  
8 Q. What is it?  
9 A. It's the 2003 roll-up of all band 5s in the  
10 marketing organization and their performance assessment,  
11 talent planning assessment, performance, and potential.  
12 Q. Is this the talent planning grid that Alec  
13 Kotopoulos was asking for?  
14 A. He would not have access to this, to all of  
15 this information because it, it's confidential. He  
16 would only have access to his organization.  
17 Q. Okay. And what does this cover?  
18 A. This covers all band 5s within marketing and  
19 communications.  
20 Q. Ahh.  
21 A. So everybody under Cathy Bessant, band 5.  
22 Q. Okay. Now, this says, 2003 Performance  
23 Summary, Band 5.  
24 A. Uh-huh.  
25 Q. Can you tell or do you know as of what date

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Exam by Mr. Fine

1 walked through in more details.  
2 Q. Okay. Is there some necessary connection  
3 with the fact that he was trying to get rid of  
4 researchers who were not contributing in a business way  
5 to the organization and the fact that most of the  
6 researchers that he was getting rid of were over the age  
7 of 40?

8 MR. KANE: Objection.

9 THE WITNESS: Alec wasn't focused on getting  
10 rid of, getting rid of anybody. What he was focused on  
11 was improving the performance of his organization.

12 BY MR. FINE

13 Q. Okay. But the sequence of events as I  
14 understand it is you had this data pulled. You saw that  
15 a disproportionate number of the terminations in the  
16 past 12 months were terminations, voluntary and  
17 involuntary, of people over the age of 40.

18 A. Uh-huh.

19 Q. You have a discussion with Alec Kotopoulos.  
20 The explanation that you reported that Alec Kotopoulos  
21 gave you didn't have anything to do with age. Right?

22 A. Uh-huh.

23 Q. So how was the explanation that he gave  
24 logically related to your concern?

25 A. Alec wasn't focused on age as a criteria in

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Exam by Mr. Fine

1 Improving performance. He was focused on performance  
2 So he wasn't paying attention to age.

3 Q. And couldn't that have been part of the  
4 problem?

5 MR. KANE: Objection.

6 BY MR. FINE

7 Q. In other words, you said earlier that one of  
8 the reasons why you did this is you wanted to call  
9 attention to patterns that the person himself or herself  
10 might not be aware of. Right?

11 A. Uh-huh.

12 Q. Okay.

13 A. Or may not be paying attention to, yeah.

14 Q. Right. And so you called attention to Alec  
15 Kotopoulos that there is a disproportionate number of  
16 the terminations happen to be of people over the age of  
17 40, which to your mind, I believe, quite appropriately  
18 suggested to you that somebody involved with those  
19 terminations might unconsciously have a discriminatory  
20 attitude towards older workers. Right?

21 A. I wasn't thinking that somebody might  
22 unconsciously have a discriminatory attitude towards  
23 older workers. When I talked to Alec, he was able to  
24 explain the performance reasons for any termination, for  
25 every termination. And the decisions were made on an

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Exam by Mr. Fine

1 individual basis, based on individual performance.  
2 Q. Well, that's -- you don't have any  
3 independent way of knowing that. You're just, you're  
4 just saying what he told you. Right?

5 MR. KANE: Objection.

6 BY MR. FINE

7 Q. You didn't check this out?

8 A. The --

9 Q. Did you?

10 A. Well, I guess I don't understand your  
11 question. The manager gave me rationale, the  
12 performance deficiencies. And I don't understand your  
13 question.

14 Q. Okay. The question is this: You discovered  
15 something important and significant which there was, and  
16 what you discovered was that there was not just a subtle  
17 but a strong pattern of age bias in the terminations in  
18 the previous 12 months in Mr. Kotopoulos' area. And you  
19 bring that to Mr. Kotopoulos's attention. And he  
20 doesn't respond to you by saying, look, let's talk about  
21 age. What he responds to you is saying, look,  
22 everything I did was justified. And you testified  
23 earlier that you didn't do a single thing to check out  
24 whether what he was saying to you was true. Right?

25 MR. KANE: Object to form.

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Exam by Mr. Fine

1 BY MR. FINE

2 Q. Just answer that part. That's correct, you  
3 didn't do a single thing to check out whether what he  
4 said to you was true, right?

5 A. I did not pursue the data further. But a  
6 point of clarification is that the past 12 months on  
7 this data were not, Alec wasn't in role for that 12  
8 months, so not all of these exits from the business were  
9 while he was the manager.

10 Q. That's true.

11 A. So what I --

12 Q. And did you look at when the terminations of  
13 the older employees got started?

14 A. Well, if I remove the '02 data -- and that's  
15 what would be accurate to look at -- I just wanted to  
16 clarify that when you look at this data, anything in '02  
17 was really not made while Alec was a manager of that  
18 organization.

19 Q. Yes. But, for example, there are these, the  
20 four terminations for alleged unsatisfactory performance  
21 were all in the first six months of 2003, right?

22 A. Uh-huh.

23 Q. All on Alec's watch. So, in fact, the  
24 pattern of age bias was even stronger than what you said  
25 in your email to him, wasn't it?

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Exam by Mr. Fine

1 A. I didn't pursue looking deeper into it, no.

2 Q. Right. And looking back on it, that was  
3 perhaps not a good thing, right?

4 MR. KANE: Objection.

5 THE WITNESS: I disagree.

6 BY MR. FINE

7 Q. Well, the Bank had a policy against age  
8 discrimination, right?

9 A. I believe so.

10 Q. And you're a high executive in this company,  
11 right?

12 A. Relatively speaking, yeah.

13 Q. Okay. You came across evidence of age  
14 discrimination?

15 MR. KANE: Objection.

16 THE WITNESS: I disagree. I came across  
17 data -- I looked at the data. The -- based on the  
18 conversations that I had with Alec, I was confident that  
19 he was not discriminating based on age.

20 BY MR. FINE

21 Q. Yes. And the universe of information that  
22 you had on the basis of which you were willing to  
23 totally close your eyes to this evidence of age  
24 discrimination was what Alec Kotopoulos told you?

25 MR. KANE: Objection.

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Exam by Mr. Fine

1 BY MR. FINE

2 Q. In a single meeting?

3 MR. KANE: Objection.

4 BY MR. FINE

5 Q. Right?

6 A. I disagree with this, with your phrase of my  
7 "willingness to close my eyes." That's not accurate.  
8 That's completely inaccurate.

9 Q. Well, I guess the court and jury in this case  
10 will make up their own mind. But the fact of the matter  
11 is, you pulled this data. You sent it to Alec  
12 Kotopoulos. And thereafter, you did one thing and one  
13 thing only, and that was, you had a one-hour meeting  
14 with Mr. Kotopoulos. Right?

15 A. Yes.

16 Q. Did you do a single thing other than that?

17 MR. KANE: Objection.

18 THE WITNESS: Don't think there was any need  
19 to.

20 BY MR. FINE

21 Q. Okay. Now I want to question the witness in  
22 her capacity as a 30(b)(6) representative. Did the Bank  
23 have any policy or practice in place at any time in the  
24 period from August 20th, 2002 to June 13th, 2003  
25 requiring supervisors to document and/or maintain

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Exam by Mr. Fine

1 records of their supervisees' job performance?

2 A. The short answer on that is no, the Bank  
3 didn't require that level of maintenance of records.  
4 Bank required that associates have an annual performance  
5 review.

6 Q. An annual performance review?

7 A. (Nodding head up and down.)

8 Q. I thought there was a requirement of a  
9 quarterly review?

10 A. That's a, it's a, it was not a requirement at  
11 the time.

12 Q. Was it a practice at the time, that people  
13 generally got quarterly reviews?

14 A. It was not -- that was not consistently  
15 implemented. There was no requirement that people have  
16 quarterly performance reviews.

17 Q. Okay. Was there any policy or practice at  
18 the Bank that required supervisors to maintain records  
19 of positive as well as negative comments and feedback  
20 regarding their supervisees' job performance?

21 A. No.

22 Q. Okay. At any point in your work at the Bank,  
23 have you talked to executives about how they should go  
24 about terminating people?

25 MR. KANE: Objection.

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Exam by Mr. Fine

1 THE WITNESS: I don't advise -- it's not my  
2 role to terminate folks in that capacity. Managers work  
3 with personnel center, Advice and Counsel.

4 BY MR. FINE

5 Q. Okay. I understand that that may not be a  
6 standard part of your function. My question was: At  
7 any time in your work at the Bank, did you ever do that?  
8 Did you ever talk to executives in however general a way  
9 about policies and practices and so forth in connection  
10 with terminating employees?

11 MR. KANE: Objection.

12 THE WITNESS: I don't remember any specific  
13 instances, no.

14 BY MR. FINE

15 Q. Okay. Can you think of any reason why it  
16 might be a good idea for the Bank to keep records  
17 documenting a supervisees' job performance?

18 MR. KANE: Objection.

19 THE WITNESS: Can I think of a reason why it  
20 would be important to keep a record of performance?

21 BY MR. FINE

22 Q. Why it might be a good idea.

23 MR. KANE: Objection.

24 THE WITNESS: Yeah, I can, I can think of  
25 reasons why, you know, and performance is, you know,

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